116 FERC ¶ 61,139
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Columbia Gulf Transmission Company Docket No. RP04-413-000

v.

Tennessee Gas Pipeline Company

ORDER AFFIRMING INITIAL DECISION

(Issued August 11, 2006)

1. On October 21, 2005, an initial decision was issued concerning a complaint filed by Columbia Gulf Transmission Company (Columbia Gulf) which alleged that Tennessee Gas Pipeline Company (Tennessee) breached their Reciprocal Operating Lease Agreement (Reciprocal Lease) by imposing additional charges on Columbia Gulf's shippers for allegedly transporting their gas to a third-party-owned processing plant on Tennessee's system. The Administrative Law Judge (ALJ) found that Tennessee, in fact, breached the Reciprocal Lease by imposing such charges and ordered Tennessee to refund any such charges collected. The Commission affirms the initial decision as discussed below.

Background

2. The complaint centers on Tennessee's claim that Columbia Gulf shippers are obligated to Tennessee to provide for the processing of their gas to remove liquefiable hydrocarbons and that, to fulfill that requirement, the Columbia Gulf shippers must ship their gas on Tennessee to a third-party owned processing plant downstream on Tennessee's system and pay Tennessee a transportation charge for that claimed service. Although Columbia Gulf is not being assessed these transportation charges, Columbia Gulf is concerned that it is losing its shippers to Tennessee because they can avoid these additional charges by switching to Tennessee. In addition, shippers who remain as customers of Columbia Gulf risk having their gas shut-in as a consequence of not obtaining a processing agreement.

3. The genesis of the Columbia Gulf complaint lies in the Reciprocal Lease it entered into with Tennessee in 1996. The Reciprocal Lease, in turn, formed the basis for a joint application by Columbia Gulf and Tennessee for NGA section 7 abandonment and certificate authority filed with the Commission on September 20, 1996, which the Commission granted, in part, as clarified and with conditions, in an order issued February 26, 1997.[1]

4. To understand the issues raised by the complaint, it is important to understand the configuration and operation of the facilities involved and the historical relationship of the parties based on the extensive record complied by the ALJ.[2] Historically, Columbia Gulf and Tennessee have jointly-owned the South Pass 77 transmission line in the offshore Gulf of Mexico. The South Pass 77 line begins at a platform in the offshore Gulf of Mexico and ultimately terminates at a point onshore in southeastern Louisiana in Plaquemines Parish where it interconnects with Tennessee's "Muskrat Line" (which generally flows from Egan, Louisiana, in a west to east direction) and Tennessee's "500 Line" (which generally flows north). All the volumes that flow on the South Pass 77 physically flow into Tennessee's 500 Line and are processed at the third-party owned Yscloskey straddle plant some 65 miles north of the interconnection with the terminus of South Pass 77. At the time, Tennessee was a party to a 1968 Straddle Plant Agreement under which it obtained 17 percent of the value of the products extracted from the plant (referred to as a "17 percent over-ride").[3] The South Pass 77 Line is physically separate from Columbia Gulf's mainline, which is located in southwestern Louisiana over 200 miles west of the South Pass 77 Line and generally runs northeastward from Egan, Louisiana, to a point of interconnection with Columbia Gas Transmission Corporation's facilities at the Kentucky-West Virginia border. Accordingly, Columbia Gulf shippers with supplies attached to the South Pass 77 Line had to nominate on Columbia Gulf for service up to the South Pass 77 terminus and then nominate on Tennessee to obtain access to Columbia Gulf's mainline, thereby paying stacked rates under multiple contracts requiring multiple nominations with the two pipelines.

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[1] *Tennessee Gas Pipeline Co.*, 78 FERC ¶ 61,182 at 61,752 (1997) (1997 Certificate Order).

[2] See Appendices A and B. Appendix A (Exhibit No. TGP-2) contains an actual map of the facilities whereas Appendix B (Exhibit L to Tennessee's Answer to the Complaint) contains a schematic drawing depicting physical and contractual paths of the gas.

[3] *Columbia Gulf Transmission Co. v. Tennessee Gas Pipeline Co.*, 113 FERC ¶ 63,008 at P 217 (2005) (Initial Decision).

5. According to their joint application for section 7 certificate and abandonment authority filed with the Commission, Columbia Gulf sought a way to obtain capacity to directly connect its shippers' South Pass 77 supplies with its mainline at Egan, Louisiana.[4] Columbia Gulf stated that, through the lease of capacity from Tennessee on Tennessee's Muskrat Line, for the first time Columbia Gulf's customers would obtain direct access from the South Pass 77 area to its mainline. Tennessee, in turn, sought more capacity on the South Pass 77 line through a reciprocal lease of additional South Pass 77 capacity from Columbia Gulf.[5] Under the proposal, Columbia Gulf would transport its shippers' gas from its receipt points on the South Pass 77 Line in a forward-haul on its own South Pass 77 capacity to the terminus of that line, and then, by backhaul/displacement using the leased Muskrat capacity (because the Muskrat Line flows in the opposite direction, away from Egan), to an interconnect with Columbia Gulf's mainline some 218 miles away at Egan, Louisiana, and then by forward-haul again from that point on Columbia Gulf's mainline until ultimate delivery of its shippers' gas off of its mainline.

6. Regarding the leased capacity, section 4.2 of the Reciprocal Lease provides: "CGT [Columbia Gulf] shall have the right to use such capacity as if it were CGT's own capacity." To physically implement the backhaul/displacement portion of its service between the South Pass 77 terminus and Egan, section 4.3.1 of the Reciprocal Lease provides that Columbia Gulf would deliver its shippers' aggregated volumes to Tennessee at the terminus of the South Pass 77 Line into Tennessee's 500 Line and Tennessee would simultaneously deliver equivalent quantities of gas from its facilities at Egan that would enter Columbia Gulf's mainline at that point. The parties agree the quantities so delivered will be thermally equivalent. As consideration for the Reciprocal Lease's rights and obligations, the Reciprocal Lease provides that each party, *i.e.*, Columbia Gulf and Tennessee, is to pay the other the sum of one dollar per year.[6] The

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[4] The Reciprocal Lease provides: "WHEREAS, CGT [Columbia Gulf] desires to lease a portion of TGP's (Tennessee] mainline interstate pipeline system downstream of the South Pass 77 System to permit CGT to deliver its gas from the South Pass 77 System back to its existing mainline interstate pipeline system primarily at Egan Louisiana." Exhibit CGT-2, page 1.

[5] The Reciprocal Lease provides: "WHEREAS, TGP [Tennessee] desires to lease a portion of CGT's [Columbia Gulf] capacity on the South Pass 77 System to increase its available capacity on that system." Exhibit CGT-2, page 1.

[6] Ex. CGT-2 at 2 and 4.

Reciprocal Lease also provides that the volumes that each pipeline tenders to the other shall conform to the gas quality specifications of Tennessee's FERC Gas Tariff.[7]

7. Section 4.5.5 of the Reciprocal Lease states that "All natural gas quantities tendered by [Columbia Gulf] into the [Tennessee] Leased Capacity and, to the extent that [Columbia Gulf] complies with its obligations hereunder, all natural gas quantities delivered by [Tennessee] to [Columbia Gulf] at the [Tennessee] Delivery Point shall conform with the natural gas specifications set forth in [Tennessee's] FERC Gas Tariff …."[8] Tennessee relies on this provision in claiming that all gas shipped on the leased capacity must be processed to meet Tennessee's gas quality specifications.[9]

8. The joint applicants represented to the Commission that the arrangement would eliminate the need for Columbia Gulf's shippers to have separate transportation contracts with Tennessee and these shippers would, therefore, no longer have to make multiple service nominations on both Columbia Gulf and Tennessee or pay multiple transportation rates to get their supplies to Columbia Gulf's mainline. Columbia Gulf and Tennessee stated that the lease would not impact Tennessee's forward haul capabilities because the lease can be accommodated by displacement (backhaul) and would not require the use of Tennessee's mainline capacity on a forward haul basis. Further, they represented that there would be no rate impact on each pipeline because the arrangement is a reciprocal lease whereby each party thereto, Columbia Gulf and Tennessee, pays only $1.00 to each other. In comments filed on the proposal, Indicated Shippers[10] stated that they based their support of the application, *inter alia*, on both Tennessee's and Columbia Gulf's

[7] Reciprocal Lease, section 4.5.5. That provision states that if gas contains constituents that might interfere with the merchantability of the gas or might cause operational or environmental problems, then Tennessee and Columbia Gulf shall mutually agree upon the reasonable actions to remove such constituents and, pending such action, the party receiving such gas may refuse to accept any gas that is not of acceptable quality.

[8] Ex. CGT-2 at 5.

[9] Tennessee August 13, 2004 Answer at 10.

[10] Amoco Production Company, Conoco, Inc., Exxon Corporation, Mobil Exploration and Producing U.S. Inc., Texaco Natural Gas Inc., and Vastar Gas Marketing, Inc.

assurances that the application will have no rate impact on shippers on either system.[11] However, Indicated Shippers sought clarification that the leased capacity will be treated as an extension of each pipeline's own system to be consistent with the open access principles of Order No. 636.[12]

9. In the Commission's Order Granting Abandonment, Issuing Certificates, and Denying Pre-Granted Abandonment issued February 26, 1997, the Commission authorized Columbia Gulf and Tennessee "to abandon by lease to each other the respective capacity on South Pass and Muskrat, and issue[d] certificates to the applicants authorizing them to acquire the leased capacity."[13]

10. The 1997 Certificate Order observed that the Muskrat Line would be used by Columbia Gulf to transport its shippers' gas to Egan by displacement, with no forward haul by Tennessee. The Commission adopted the reasons and representations of the parties in their application in granting the requested certificate and abandonment authority, subject to two conditions that clarified the authorizations granted and which, in effect, clarified the Reciprocal Lease agreement as follows: (1) in order to meet the Order No. 636 requirement that the shipper must hold title to the gas being transported so that the open access principles of that order may apply, Tennessee and Columbia Gulf are each "to treat the leased capacity as an extension of their own facilities" and (2) because the capacity will be treated as an extension of the acquiring pipeline's system "the leased capacity will be subject to the respective tariffs of Columbia Gulf and Tennessee."[14] No party sought rehearing of these clarifications. Accordingly, contrary to the positions taken at the hearing below by both Columbia Gulf and Tennessee, the Reciprocal Lease provides that the backhaul on the Muskrat Line is to be performed by Columbia Gulf pursuant to its tariff as if the Muskrat Line were Columbia Gulf's own facilities, not by Tennessee under Tennessee's tariff. As discussed below, these conditions, along with the representations of Columbia Gulf and Tennessee to the Commission as to benefits to the

[11] Comments of Indicated Shippers in Support, Docket No. CP96-806-000, filed October 17, 1996, at 3.

[12] *Id.* at 8.

[13] 78 FERC ¶ 61,182, at 61,751.

[14] *Id.*

pipelines' respective shippers, are important to our disposition of the issue in the case and are to be treated as part of the agreement approved by the Commission.[15]

11. The record below reflects that, in 2004, the Yscloskey Plant owners, who also are producers, decided to reduce processing at the plant because the hydrocarbons in the gas stream were more valuable as gas than as liquids. As a result, Tennessee and the plant owners entered into a revised Straddle Plant Agreement which significantly reduced Tennessee's share of the plant revenues (its plant over-ride). As a further result of the plant owners' action, Tennessee claimed a need to remove liquefiable hydrocarbons from the gas stream to avoid harmful fallout of the liquefiable hydrocarbons in its mainline and posted a new 20 degree hydrocarbon dew point requirement for all gas entering the South Pass 77 system.[16] At Tennessee's request, the Straddle Plant Agreement was modified to provide, in section 2.13, that processing agreements with the plant owners would include a bundled transportation charge of $0.02/Dth to pay for interruptible Tennessee transportation to the plant.[17] Tennessee recovers the $0.02 charge through its contract with Dynegy Midstream Services, Inc. (Dynegy), who passes the $0.02 on to Tennessee. Based on Tennessee's claimed need to require processing of Columbia Gulf South Pass 77 gas, Dynegy instructed Columbia Gulf shippers that they needed to enter into processing contracts (and, therefore, pay the bundled $0.02/Dth transportation charge) or have their gas shut-in. However, the record reflects that, despite the plant owners' decision to reduce processing at the plant, the residue gas output of the plant nonetheless meets Tennessee's new 20 degree hydrocarbon dew point requirement and is "conforming gas." Further, as noted, all the gas flowing from South Pass 77 physically flows to the Yscloskey plant, and all the gas flowing through the plant is commingled, all

[15] By letters dated February 28, 1997, and March 18, 1997, respectively, Tennessee and Columbia Gulf notified the Commission that they accepted the certificates issued by the Commission in Docket No. CP96-806-000 and had commenced service thereunder on March 1, 1997.

[16] While the Commission has found that Columbia Gulf's and Tennessee's tariffs allowed imposition of gas quality standards even though the standards do not expressly appear in the tariffs, the Commission's orders in *Indicated Shippers v. Columbia Gulf Transmission Co.,* 106 FERC ¶ 61,040 (2004), and *Norstar Operating, LLC v. Columbia Gas Transmission Corporation*, 115 FERC ¶ 61,094 (2006), have also found that the tariff provisions allowing imposition of these quality standards are unjust and unreasonable and the Commission subsequently directed both Columbia Gulf and Tennessee to revise their tariffs by replacing the overly-broad provisions.

[17] Initial Decision at P 79.

the gas is processed identically, and the level of processing at the plant has not changed since 2004. Hence, the quality of the residue gas stream from the plant, which meets Tennessee's gas quality requirements, will not change irrespective of whether Columbia Gulf shippers now are required to enter into processing contracts with the plant and indirectly pay transportation charges to Tennessee.

12. As a result of these events, Columbia Gulf filed a complaint on July 26, 2004, alleging that Tennessee breached their Reciprocal Lease, the 1997 Certificate Order, and the Natural Gas Act (NGA)[18] by charging Columbia Gulf's shippers for transportation services Tennessee claimed it was providing them to bring their gas from the terminus of South Pass 77 to the Yscloskey Plant on Tennessee's 500 Line. On August 13, 2004, Tennessee filed an answer to the complaint denying Columbia Gulf's allegation.

13. In its complaint, Columbia Gulf alleged that Tennessee, in April 2004, began notifying Columbia Gulf's customers that "they would be required to pay an additional charge to Tennessee to transport their gas on Tennessee's mainline from the terminus of the [South Pass] 77 system to the Yscloskey processing plant on Tennessee's 500 Line" but that, if they shipped gas using Tennessee's South Pass 77 capacity, no additional charges would be made.[19] Columbia Gulf asserted that as of July 1, 2004, 60 percent of its shippers representing about 75 percent of the volumes flowing on its South Pass 77 capacity were lost to Tennessee to avoid the charges and now flow on Tennessee's South Pass 77 capacity.[20] According to the complaint, Tennessee claimed that Columbia Gulf's shippers' unprocessed gas must be processed to meet Tennessee's quality specifications and that it cannot be processed unless the shipper pays for transportation on Tennessee's pipeline. Columbia Gulf noted that the fact the gas must be processed is not a new situation because gas delivered into Tennessee's mainline always has been, and continues to be, unprocessed. Columbia Gulf asserted that, other than Plant Thermal Reduction

[18] 15 U.S.C. §§ 717a-717w.

[19] Columbia Gulf stated that a "Columbia Gulf shipper received notification from Tennessee that an additional charge of 2 cents plus 1% fuel would be charged for all gas that flowed on Columbia Gulf's portion of the South Pass capacity." Complaint at 12.

[20] Complaint at 13.

(PTR) charges for transporting liquifiables to the Yscloskey Plant, no additional transportation charges by Tennessee are permitted by the Reciprocal Lease.[21]

14. Reiterating the reasons stated in the 1997 Certificate Order by Tennessee and Columbia Gulf in support of the authorization of the leases, among other things, Columbia Gulf asserted that the Reciprocal Lease provides that gas moving on Columbia Gulf's South Pass 77 capacity will be delivered by Tennessee to Egan by displacement and that there will be no charge by Tennessee for the displacement service. Columbia Gulf asserted that Tennessee has already been compensated by the increased South Pass 77 capacity entitlement it leased from Columbia Gulf at no charge. Accordingly, Columbia Gulf requested that the Commission find that such additional transportation charges are anticompetitive and violate the Reciprocal Lease agreement, the NGA, and Commission orders, and requested that the Commission direct refunds of such charges.

15. In its answer, Tennessee asserted that it has not violated anything and that the Reciprocal Lease does not apply to transportation of nonconforming gas to the Yscloskey Plant and does not authorize or otherwise require free transportation to the plant. Tennessee asserted that all gas delivered into the South Pass 77 system must meet its tariff's gas quality specifications. Tennessee relied on the fact that section 4.5.5 of the Reciprocal Lease requires that gas delivered at the terminus of South Pass 77 must meet its quality standard specifications and that the gas that enters the South Pass 77 system is unprocessed. It observed that the only way for the gas to be processing is to bring the gas to the Yscloskey Plant and that, to reach the plant, the gas must be carried the 65 miles from the terminus of the South Pass 77 line on a forward haul basis on Tennessee's wholly-owned system (the 500 Line).[22] Tennessee argued that additional transportation

[21] Section 1 "Availability" of Rate Schedule PTR provides: "This rate schedule governs the transportation by Tennessee Gas Pipeline Company (Transporter) of separately nominated liquefiable hydrocarbons (PTR). The Rate Schedule is available to any Shipper which has retained the processing rights to the gas delivered to Shipper and which has executed a PTR Transportation Agreement wherein Transporter agrees to transport PTR on a basis commensurate with the transportation of the gas with which the PTR is commingled (the "related gas Stream") up to a specific maximum daily PTR Transportation Quantity. The transportation rates under this Rate Schedule shall also apply to gas transported under Rate Schedule IT to make up the differential in dekatherms due to the extraction of PTR at the processing plant (PTR make-up)."

[22] See Appendix C (Exhibit No. CGT-45) which contains a map illustrating Tennessee's claim with regard to the contractual and physical path of South Pass 77 gas that Tennessee submitted in a response to a Staff data request (Staff-TGP 1.9.1).

charges are warranted because the Reciprocal Lease does not include a path to the plant.[23] According to Tennessee "it is not imposing a new charge on the Columbia Gulf shippers" and "has offered shippers that do not have a current Tennessee transportation agreement with a path to the Yscloskey plant, a discounted interruptible transportation agreement on the Tennessee mainline if the party holds processing rights that it wishes to exercise at the plant."[24] Tennessee observed that its tariff permits it to either decline to accept the non-conforming gas supplies or to require them to be processed at a downstream plant.[25]

16. Based on the parties' pleadings, the Commission found that it was necessary to "initiate hearing proceedings so that the facts regarding [their] long term relationship may be fully ventilated and the intent of the contractual underpinnings of [the] relationship may be fully explored."[26]

17. The hearing was held on June 27, 2005, and lasted seven days. Prior to the hearing, the parties agreed that the sole issue in dispute was as follows:

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[23] *Columbia Gulf Transmission Co.*, 109 FERC ¶ 61,055 at P 9.

[24] *Id.* at P 11.

[25] Article II, section 3(b) of the GT&C of Tennessee's tariff requires gas that gas delivered to Tennessee must contain between 675 and 1100 BTU/cf and be "commercially free" of hydrocarbon liquids. Sub Fourth Revised Sheet No. 306 to Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1. Article II, section 9 of the General Terms and Conditions (GT&C) of Tennessee's tariff provides: "Transporter at its reasonable discretion may require that some or all of the gas to be transported be processed to remove liquid and liquefiable hydrocarbons prior to delivery to Transporter or may require evidence that satisfactory arrangements have been made for the removal of liquid and liquefiable hydrocarbons at a separation and dehydration and/or processing plant on Transporter's system. In the event that any separation and dehydration and/or processing required by Transporter is to occur after delivery of transportation gas to Transporter, then such transportation of liquefiable hydrocarbons shall be done pursuant to a PTR Transportation Agreement in the form included in Transporter's FERC Gas Tariff and transportation of liquid (sic) may be done by separate agreement with Transporter." Second Revised Sheet No. 308 to Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1.

[26] *Columbia Gulf*, 109 FERC ¶ 61,055 at P 15.

> Has Tennessee breached the Reciprocal Lease Agreement, the Commission's order approving the Reciprocal Lease Agreement, and/or the Natural Gas Act by imposing charges (directly or indirectly) for transportation to the Yscloskey processing plant upon shippers using Columbia Gulf's capacity on the South Pass offshore pipeline system?[27]

18. The Initial Decision was issued on October 21, 2005. The ALJ heard testimony from 11 witnesses, and 103 exhibits were received in evidence with over 1100 pages of hearing Transcript. Although the issue concerned Tennessee's transportation charges, the debate at the hearing centered on the question of processing: the parties appeared to agree that Columbia Gulf's shippers still are obligated to Tennessee to have their gas processed at the Yscloskey plant in order to meet the gas quality standards of Tennessee's tariff, but disagreed as to whether Tennessee could charge for the transportation of their gas to the plant. More particularly, the debate focused on whether the Reciprocal Lease impliedly contained a transportation path to the Yscloskey Plant at no additional charge, as Columbia Gulf argued, or whether Columbia Gulf shippers had an obligation to obtain transportation of their gas to the plant wholly independent of the Reciprocal Lease and therefore subject to Tennessee transportation charges, as Tennessee argued. Nonetheless, both Columbia Gulf and Tennessee asserted that Columbia Gulf shippers' gas had to meet the gas quality requirements of Tennessee's tariff. Accordingly, both parties contended that the Columbia Gulf shipper gas physically is processed at the Yskloskey plant; they disagree on whether the Columbia Gulf shippers owe Tennessee any charges for transportation of their gas to the plant.

19. In finding for Columbia Gulf, the initial decision found that the intent of both parties in entering into the Reciprocal Lease was clear: to provide Columbia Gulf with a "gapless" continuous path from South Pass 77 to Egan.[28] Relying on the 1997 Certificate Order, the ALJ found it clear that, under that ruling, Columbia Gulf and Tennessee were to "treat the leased capacity respectively on Muskrat and South Pass as an extension of their own facilities"[29] and, as such, shippers could nominate on Columbia Gulf from receipt points on South Pass 77 to the delivery point at Egan without having to nominate on Tennessee and with no obligation to Tennessee for transportation charges.[30] The ALJ

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[27] Initial Decision, 113 FERC at P 6.

[28] *Id.* at P 269.

[29] *Id.* at P 273.

[30] *Id.* at P 274.

found that the terms of the lease are unambiguous, as supported by extrinsic evidence of the negotiations that preceded the execution of the Reciprocal Lease, in providing for the inclusion of a transportation service from the South Pass 77 terminus to the Yscloskey processing plant at no additional charge.[31] In particular, the ALJ found "entirely credible" Columbia Gulf's witness Becker's testimony that, except for Tennessee's transportation of liquifiables (PTR) volumes on its own capacity, Tennessee's negotiator Gotcher indicated that Tennessee would not assess any charges on Columbia Gulf shippers and whatever agreement Columbia Gulf reached with Tennessee would be at no cost to Columbia Gulf shippers, unencumbered by Tennessee and without the need to separately contract for transportation on Tennessee.

20. Because the physical path of the gas traveled from South Pass 77 through the Yscloskey Plant before, during, and after the negotiation of the Reciprocal Lease, the ALJ found that "it strains credulity for Tennessee to suggest that the parties did not contemplate that the Reciprocal Lease included the path from the South Pass terminus, through Yscloskey, to Egan."[32] The ALJ continues by stating that

> … were any reasonable person to refer just to the Reciprocal Lease, s/he must conclude that, unambiguously, Columbia Gulf and its shippers were guaranteed a seamless path from the South Pass system, though Yscloskey, to Egan without the necessity of having to nominate on any other pipeline for any portion of that movement. Had Tennessee wanted to retain the right to charge Columbia Gulf's shippers for moving their volumes between the South Pass 77 terminus and Yscloskey,

[31] *Id.* at P 275.

[32] *Id*. at P 276. The ALJ finds that Tennessee is creating a fictional path for non-conforming gas up to the Yskloskey Plant from the terminus of South Pass 77 for processing and back to the South Pass 77 terminus before it considers the gas to be on the Reciprocal Lease contract path. See Appendix C. The ALJ found that, in fact, the gas never flows back to the South Pass 77 terminus and continues on directly north from the plant on Tennessee's 500 Line. This fact, the ALJ held, further establishes the illogical nature of Tennessee's attempt to separate the physical path of the gas from South Pass 77 terminus to Yskloskey from the gas's contract path from the South Pass 77 terminus to Egan. *Id.*, at note 77.

> it could have, and should have, specifically negotiated for that right when it and Columbia Gulf agreed to the Reciprocal Lease.[33]

21. Finally, regarding contracts for Tennessee's transportation of PTR to the Yscloskey Plant, the Initial Decision found that the PTR volumes are not transported on Columbia Gulf's South Pass 77 capacity and, consequently, are not the volumes that are to be seamlessly transported to Egan under the Reciprocal Lease.[34] Thus, the Initial Decision held that there is a relationship between the PTR volumes and the volumes shipped from the terminus of South Pass 77 to Egan, adopting Staff's observation that: "Columbia Gulf witness Becker clarifies that 'liquifiables' in the South Pass gas stream were not to be transported under Columbia Gulf's 115,000 Mcf/d[ay] capacity allotment in the South Pass system. Tennessee was to move the liquefiable portion of the South Pass capacity allotment."[35]

22. Tennessee filed a brief on exceptions asserting that the Reciprocal Lease does not include a path to the Yscloskey Plant and any such service is independent of the lease. Tennessee asserts that, by relying on extrinsic evidence to determine the intent of the parties to the lease, the ALJ did not properly apply Texas contract law. Tennessee argues that the ALJ, having found the contract to be unambiguous, should have, but did not, apply Texas law[36] to look only at the lease instrument alone and not at any extrinsic evidence of a free path to the Yscloskey Plant. According to Tennessee, the ALJ's reliance on extrinsic evidence to determine the intent of the parties to the lease is in violation of the parol evidence rule when analyzing an unambiguous contract.[37] Such an analysis of the lease, Tennessee argues, would demonstrate that no provision of the lease

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[33] *Id.* at P 281.

[34] *Id.* at P 285.

[35] *Id.*

[36] *Id.* at P 17.

[37] Tennessee cites Texas case law for the proposition that "upon a determination that a contract is unambiguous, the parol or extrinsic evidence rule under Texas law dictates that 'the instrument alone will be deemed to express the intent of the parties.'" Tennessee Brief on Exceptions at 20 (quoting *Cash America Int'l, Inc. v. Exchange Servs., Inc.*, 83 S.W.3d 183, 187 (Tex. App. 2002) and *Sun Oil Co. v. Madeley*, 626 S.W.2d 726, 731 (Tex. 1981)).

prohibits Tennessee from charging Columbia Gulf shippers for transportation to the processing plant.[38]

23. Tennessee, therefore, asserts that the ALJ acted improperly in concluding that the Reciprocal Lease contains a path to the Yscloskey processing plant.[39] Tennessee further argues that the ALJ erred in finding that Tennessee does not have the right to charge for the transportation service it provides to the Yscloskey plant.[40] In support, Tennessee claims that the ALJ erred by not giving effect to relevant provisions of the lease. Specifically, Tennessee argues that the ALJ's interpretation renders meaningless the provision in the lease that requires Columbia Gulf to tender gas that conforms with Tennessee's tariff.[41] Tennessee states that section 4.5.5 of the Reciprocal Lease expressly grants Tennessee the right not to deliver equivalent volumes to Columbia Gulf at Egan if the gas tendered by Columbia Gulf does not conform with Tennessee's gas quality provisions.[42] Tennessee argues that, by not tendering conforming gas, Columbia Gulf has been violating the lease all along. However, Tennessee states that Tennessee has taken a more accommodating approach by allowing the shipments to continue so long as the shipper is able to demonstrate a valid processing agreement with a downstream processing plant and arranges for transportation to that plant.[43] Finally, Tennessee argues that the ALJ erred in ordering refunds because the proper remedy is damages, which the Commission has no authority to order, and the refunds are being directed to Columbia Gulf's shippers, who are not parties to this proceeding.[44]

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[38] Tennessee Brief on Exceptions at 15.

[39] *Id.* at 24.

[40] *Id.* at 36.

[41] *Id.* at 60.

[42] *Id.* at 62.

[43] *Id.* at 65. Tennessee relies on its witness Moran who testified that, in her view, conforming gas tendered by Columbia Gulf on South Pass 77 travels directly to Egan under the reciprocal Lease, whereas nonconforming gas travels from the terminus of South Pass 77 on Tennessee's 500 Line capacity to the Yscloskey Plant, where it is processed, and the conforming residue gas is backhauled to the terminus of South Pass 77 where Columbia Gulf backhauls it to Egan. See Exhibit No. CGT-45.

[44] *Id.* at 70 – 81.

24. Briefs opposing exceptions were filed by both Columbia Gulf and Commission trial staff. Columbia Gulf's brief opposing exceptions challenges Tennessee in several respects, namely, asserting that the Initial Decision is consistent with Texas law, the lease imposes a duty on Tennessee to deliver gas tendered by Columbia Gulf's shippers on a firm basis at no additional charge, and that Tennessee's imposition of additional transportation charges was properly found to be a breach of the lease. Columbia Gulf also argues that Tennessee's right to charge for transportation pursuant to its tariff is irrelevant to this dispute. Columbia Gulf continues that Tennessee's argument that it has a right to charge for transportation to the processing plant is rooted in its contention that it is entitled by tariff to charge for all transportation on its system unless the Reciprocal Lease expressly provides otherwise. Columbia Gulf challenges Tennessee's claim that it is entitled to charge Columbia Gulf's South Pass shippers for transportation between the South Pass terminus and the Yscolskey processing plant "when that path is not being used to effectuate the intent of the Reciprocal Lease or to transport gas on behalf of Columbia Gulf's South Pass shippers."[45]

25. The Commission trial staff's brief opposing exceptions addressed several of Tennessee's exceptions, asserting that the ALJ did not err by finding: that Tennessee engaged in a breach of contract under Texas law; that the Reciprocal Lease includes a path to the Yscolskey processing plant; that Tennessee breached the Reciprocal Lease because the lease does not include a provision authorizing Tennessee to charge for such transportation; that Tennessee does not have the right to charge for transportation on its 500 Line based on Tennessee's FERC tariff and on the absence of the 500 Line from the Reciprocal Lease; and that the ALJ gave effect to all of the provisions of the Reciprocal Lease and did not render any provisions meaningless. Central to Staff's case is its position that because the Reciprocal Lease does not actually mention the Muskrat Line, the backhaul to Egan can occur anywhere and, therefore, occurs at the tailgate of the Yscloskey Plant. However, although it differs from the ALJ in that respect, Staff, nonetheless, concurs with the ALJ that the transportation to the plant is free.

Discussion

26. The Commission affirms the ALJ's decision in this case and adopts his finding that Tennessee is not authorized to charge Columbia Gulf South Pass shippers for transportation to the Yscloskey Plant under the certificate issued by the Commission in its 1997 Certificate Order, although we find that it is not necessary to adopt his finding that the Reciprocal Lease includes such transportation service. Accordingly, the Commission adopts the ALJ's findings that Tennessee breached the Reciprocal Lease

[45] Columbia Gulf Brief Opposing Exceptions at 37.

agreement, as clarified by the Commission's 1977 Certificate Order, by charging Columbia Gulf shippers directly, or indirectly through Dynegy, for the claimed transportation of their gas volumes to the Yscloskey plant. Further, the Commission finds that, based on the findings of the ALJ, Tennessee's actions also violate the terms and conditions of the certificate granted by the Commission. In so ruling, the Commission finds that Columbia Gulf shippers did not retain any processing obligations to Tennessee once the Reciprocal Lease went into effect. Accordingly, issues debated regarding whether the contract path under the Reciprocal Lease impliedly includes transportation to the Ysclosky Plant to accommodate such an alleged processing obligation are irrelevant and unnecessary to the disposition of the central issue of the case. It is enough to find, as the ALJ did, that the parties to the Reciprocal Lease, Columbia Gulf and Tennessee, did not intend that Tennessee would charge anything to the Columbia Gulf shippers for transportation services. It is on that basis that the 1997 Certificate Order issued the respective certificate authorizations to the parties. Tennessee's own conduct in failing to charge for transportation to the Yscloskey Plant for seven years after the Reciprocal Lease certificate authorizations took effect belies its theory of the case.[46]

27. As reflected in the extensive record compiled by the ALJ, Tennessee's claim for compensation for transportation of Columbia Gulf shipper gas stems from its claim that the actions of the plant owners in 2004 in reducing processing at the Yscloskey Plant required Tennessee to demand that Columbia Gulf shippers have processing contracts with the plant to reduce the operational "risk" of liquid hydrocarbon fallout on Tennessee's mainline. On that basis, Tennessee attempts to justify its claimed $0.02 transportation charge for getting the Columbia gulf shipper-owned gas to the plant for processing.[47] However, the record reflects that, despite the plant owners' decision to reduce processing at the plant, the residue gas output of the plant nonetheless meets Tennessee's new 20 degree hydrocarbon dew point requirement. Tennessee's witness

[46] Indeed, under Tennessee's theory that it actually transports all Columbia Gulf shipper-owned South Pass 77 gas to the Yscloskey Plant, but declined to charge for that service for seven years, the Yscloskey Plant owners also must have been providing free processing of that gas for the Columbia Gulf shippers who did not have processing agreements for that same period of time. However, the plant owners took no position on the issues of the case.

[47] As noted earlier, Tennessee would indirectly recover the $0.02 charge through its contract with the Yscloskey Plant operator, Dynegy, who in turn, charges the shippers a $0.02 Tennessee transportation component of their processing fees and passes the $0.02 it receives on to Tennessee.

Moran, for example, declared that the plant residue gas is "conforming gas." Further, since all of the gas flowing through the plant is commingled, all the gas is processed identically, and the level of processing at the plant has not changed since 2004, the quality of the residue gas stream from the plant, which meets Tennessee's gas quality requirements, remains the same irrespective of whether Columbia Gulf shippers now are required to enter into processing contracts with the plant and indirectly pay transportation charges to Tennessee. The only change is that Tennessee now wishes to charge them for these claimed transportation services, having previously operated under the Reciprocal Lease for seven years without seeking compensation.

28. On its face, the Reciprocal Lease simply provides for a swap of gas supplies between the two pipelines to permit Columbia Gulf to operationally implement backhauls of its own shipper gas to Egan from the terminus of the South Pass 77 facilities. Moreover, it only obligates Columbia Gulf to tender gas conforming to Tennessee's tariff in order to implement the exchange of gas under the lease, and imposes no obligations on Columbia Gulf's shippers. Shippers are not parties to, or subject to, the Reciprocal Lease and, therefore, do not have any obligations under the Reciprocal Lease. On the contrary, Columbia Gulf and Tennessee's shippers are third-party beneficiaries of the swap of capacity authorized by the Commission which Columbia Gulf accomplishes by the physical swap of gas volumes. The representations of Columbia Gulf and Tennessee made to the Commission to support the authorizations requested became a part of the contractual conditions of the Reciprocal Lease and the conditions of certificate authorizing the lease as if written into the agreement. Therefore, the violation of those representations and conditions regarding the effect of the lease on the Columbia Gulf shippers causes a violation of the Reciprocal Lease and the 1997 Certificate Order. Because of the absence of any authorized transportation services by Tennessee under its own certificate authorization under the 1997 Certificate Order, Tennessee is not permitted to charge Columbia Gulf's shippers anything if they nominate their gas for transportation on Columbia Gulf's leased capacity to its mainline at Egan from receipt points on South Pass 77. Further, we agree with and adopt the Initial Decision's finding that Tennessee's argument, that the plain terms of the Reciprocal Lease authorizes its charges for transportation to the processing plant because no provision of the lease *prohibits* it from charging for such service, is without merit.[48]

29. We adopt the Initial Decision's finding that Tennessee either agreed outright, or did not dispute, in the negotiations preceding the execution of the Reciprocal Lease that Tennessee would assess no additional transportation charges for gas transported pursuant to the Reciprocal Lease. The Reciprocal Lease, as proferred to the Commission in the

[48] Tennessee Brief on Exceptions at 15.

certificate application, contained a latent ambiguity not raised with the Commission regarding how Columbia Gulf was supposed to be able to deliver gas at the terminus of South Pass 77 conforming to Tennessee's gas quality requirements despite the fact that 99 percent of that gas was nonconforming unprocessed gas with no possibility of getting it processed before delivery at the South Pass 77 terminus. In that context, although we find that Tennessee's gas quality requirements do not apply and no separate transportation the Yskloskey Plant for processing is therefore actually required, the ALJ properly relied on extrinsic evidence that Tennessee would assess no additional transportation charges for gas transported pursuant to the Reciprocal Lease. Tennessee's claims that the ALJ was remiss in relying on evidence of negotiations are without merit for reasons set forth in the Initial Decision and in Columbia Gulf's Brief Opposing Exceptions. As the ALJ held, Tennessee's argument that the absence of a restriction in the Reciprocal Lease to it charging for transportation does not give it the affirmative right to so charge. It is Tennessee, in fact, who relies on extrinsic evidence, including the fact that the subject gas volumes physically flow into its 500 Line and are unprocessed, and on its posting of a 20 degree dew point requirement, as well as other claims of its witnesses regarding alleged processing obligations of the shippers extrinsic to the Reciprocal Lease.

30. The representations of the parties in their joint certificate/abandonment application Docket No. CP96-806-000, coupled with the conditions to the certificate authorizations set forth in the 1997 Certificate Order, effectively resolve the issue against Tennessee without the need to establish a free path to the Yscloskey Plant. The Commission conditioned the certificate authorization in two critical ways that modified the Reciprocal Lease: (1) "We will require that Columbia Gulf and Tennessee treat the leased capacity respectively on Muskrat and South Pass as an extension of their facilities . . . ."[49] and, (2) "the leased capacity will be subject to the respective tariffs of Columbia Gulf and Tennessee . . .."[50] Further, the certificate granted Columbia Gulf such rights only with respect to Tennessee's Muskrat line between the South Pass 77 interconnect and the Egan interconnect, not on Tennessee's 500 Line. In addition, the Commission relied on the representations of Columbia Gulf and Tennessee that the certificated backhaul service "will not require the use of Tennessee's mainline pipeline capacity on a forward haul

[49] The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest in the lessor's pipeline subject to NGA section 7(b) abandonment and section 7(c) certification. *Texas Eastern Gas Transmission Corp*., 94 FERC ¶ 61,139 at 61,530 (2001); Panhandle Eastern Pipe Line Co., 73 FERC ¶ 61,137, at p. 61,390 (1995). *See also Tennessee Gas Pipeline Co.*,115 FERC ¶ 61,283 at P 4 (2006).

[50] 78 FERC ¶ 61,182 at 61,754.

basis" and "there will be no rate impact on either pipeline's shippers because the arrangement is a reciprocal lease, whereby each party [Columbia Gulf and Tennessee] pays only one dollar to the other." Finally, the Commission relied on the parties' representation that: "Columbia Gulf's shippers will no longer need to enter into separate transportation contracts with Tennessee to close the transportation gap between Columbia Gulf's capacity on South Pass and Columbia Gulf's mainline." As a result, the Commission continued, Columbia Gulf shippers will also not have to schedule on both Tennessee and Columbia Gulf. As such, Tennessee's assertion that its claimed transportation of the same Columbia Gulf shipper-owned gas volumes to the Yscloskey Plant that were the express subject of the 1997 Certificate Order somehow is independent of, and not subject to, the conditions of the 1997 Certificate Order is without merit.

31. Accordingly, there are a number of significant contradictions between Tennessee's theory that it may assess transportation charges and the Commission's certificate authorizations. First, Columbia Gulf shippers would have to enter into a separate transportation contract with Tennessee and schedule with Tennessee for forward-hauls by Tennessee on Tennessee's 500 Line to the Yscloskey Plant (as well as for backhaul service from the plant to the terminus of South Pass 77).[51] That would contradict the condition that Columbia Gulf shippers would only be required to contract and nominate on one pipeline – Columbia Gulf – as a result of the Reciprocal Leases authorized under the certificates granted the two pipelines and that no forward hauls by Tennessee would be involved. Further, neither the forward haul to the plant nor the backhaul from the plant could occur as no capacity on the 500 Line was leased to Columbia Gulf. Finally, permitting Tennessee to charge Columbia Gulf shippers for transportation contradicts the condition that Columbia Gulf's shippers would no longer pay stacked transportation rates to both Tennessee and Columbia Gulf.

32. Second, under Tennessee's theory, Columbia Gulf's shippers would remain subject to Tennessee's tariff, with Tennessee's quality requirements. That contradicts the Commission's ruling that only Columbia Gulf's tariff would apply. As a consequence of Tennessee's theory, the Reciprocal Lease's obligation on the part of Columbia Gulf to tender gas meeting Tennessee's gas quality requirements as part of its exchange

[51] Tennessee's witness Moran claimed that the nonconforming Columbia Gulf shipper-owned gas is transported by Tennessee on its 500 line to the Yscloskey plant using its own 500 Line capacity, and then the processed, *i.e.*, conforming, gas is backhauled to the terminus of South Pass 77 pursuant to the Reciprocal Lease. ID at P 94 citing Transcript at 662-63. However, neither the forward haul to the plant nor the backhaul from the plant could be pursuant to the Reciprocal Lease as no capacity on the 500 Line was leased to Columbia Gulf.

requirements would shift to Columbia Gulf's shippers. Shippers are not subject to the provisions of the lease; only Columbia Gulf and Tennessee are. If anyone at all would be subject to a Tennessee processing obligation under section 4.5.5 of the Reciprocal Lease, it would be Columbia Gulf, not its shippers.[52] The lease agreement is only between two parties, Columbia Gulf and Tennessee. It does not, and cannot, bind an entity, such as a Columbia Gulf shipper, who was not a signatory thereto. Of course, nothing bars a Columbia Gulf shipper from voluntarily electing to enter into processing contract with the Yscloskey Plant and an associated Tennessee PTR transportation contract to transport the liquifiables to the plant. The point is that they are not required to. If Columbia Gulf and Tennessee orally agreed during the Reciprocal Lease negotiations that Columbia Gulf's shippers, not Columbia Gulf, would be responsible to meet the section 4.5.5 obligation and would be required to enter into processing contracts with the plant and PTR transportation contracts with Tennessee to meet Tennessee's tariff requirements, then that agreement is unenforceable. Neither party alerted the Commission to such an agreement in their joint certificate application; hence, any such agreement never was approved. In any event, neither party could bind Columbia Gulf's shippers to such requirements in direct conflict with the terms of the certificate granted each party once the certificate issued.[53] Despite Columbia Gulf's unauthorized concession,[54] which apparently never was communicated to its shippers until the instant hearing, Columbia Gulf's shippers believed they were to be subject only to Columbia Gulf's tariff's quality provisions, which they claim they meet, and not Tennessee's.[55] Accordingly, they

[52] In this regard, we find that the mutual agreement of Columbia and Tennessee to accept $1.00 in full compensation for all services rendered under the Reciprocal lease to each other, coupled with the fact that the quality of Columbia Gulf shipper gas (which Tennessee has always accepted as operator of the South Pass 77 system) did not change, and the agreement not to charge negates Tennessee's claim that Columbia Gulf, in fact, has been violating the Reciprocal Lease.

[53] In its brief on Exceptions, at 44, Tennessee does not dispute the Columbia Gulf negotiator's, Mr. Becker's, claim that Tennessee did not know at the time of the negotiations whether Tennessee would assess a "PTR rate."

[54] *See* Initial Decision at note 57, citing Columbia Gulf Reply Brief at 10.

[55] *See, e.g.*, Transcript at 700 (Testimony of Wally Keim, Director of Producer Services, Noble Energy Marketing, Inc.)("I was notified by Denise Patrick from Tennessee that we were now going to be under the guidelines of Tennessee's hydrocarbon dew point test on the quality of our gas, and I informed her that we were shipping under Columbia's capacity which had a different quality spec under Columbia's

(continued)

believed that they had no processing obligation to Tennessee and, therefore, that they had no obligation to obtain transportation from Tennessee to the plant. We concur with the shippers.

33. Another problem with Tennessee's reliance on section 4.5.5 of the Reciprocal Lease in order to create a processing obligation on the part of Columbia Gulf shippers is that the Lease provision does not apply to gas flowing on the South Pass 77 system. According to the Reciprocal Lease, the quality provisions are directed only at "natural gas quantities tendered by [Columbia Gulf] into the [Tennessee] Leased Capacity ….", *i.e.*, the Muskrat Line.[56] Pursuant to the authorization of the 1997 Certificate Order, the Muskrat Line is to be considered an extension of Columbia Gulf's facilities and only its tariff applies to the volumes that flow under that capacity. Tennessee also vigorously argued in its brief on exceptions that the path on the 500 Line to Yscloskey is not governed by the Reciprocal Lease.[57] It is therefore clear that there is no gas quality requirement contained in the Reciprocal Lease for gas shipped on the 500 Line. Further, although section 5.11 of the Construction, Ownership, Operation and Maintenance Agreement (Operating Agreement) states that the gas shipped on the South Pass 77 system must meet the gas quality provisions of Tennessee's tariff, we have already explained that the 1997 Certificate order makes clear that Tennessee's tariff does not apply.[58] Moreover, it is clear from the hearing that "the overwhelming majority of gas

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tariff and that I didn't need to abide by her quality spec because I was shipping under their tariff."). See also, Transcript at 711:

> Q The reason Noble switched its nomination from Tennessee's South Pass capacity to Columbia Gulf's South Pass capacity was to avoid having its gas processed; is that right?
>
> A Absolutely. Tried (sic) to eliminate an excuse that Tennessee had when I was using Columbia's capacity under Columbia's tariff. I thought the tariff, under Columbia, would actually dictate the quality that I was going to be susceptible to, and that wasn't the case.

[56] Ex. CGT-2 at 5.

[57] *See generally* Tennessee Brief on Exceptions at 24 – 36 (detailing Tennessee's challenge to the ALJ's conclusion that the Reciprocal Lease contains a path to Yscloskey).

[58] Ex. CTG-3 at 12.

(over 99%) that flows on the South Pass system required processing to meet Tennessee's gas pipeline quality specifications."[59] Yet this requirement has never been enforced, and nor could it be, because the Yscloskey Plant, which is north of the terminus of South Pass 77 line, is the first place where the gas could be processed to meet the specifications. The South Pass 77 system apparently suffers no operational harm due to transporting unprocessed gas and, because of the lack of available processing facilities, was likely designed to transport unprocessed gas. Accordingly, Columbia Gulf shippers obtaining transportation from South Pass 77 to Egan have no processing obligation under Tennessee's tariff, whether pursuant to the Reciprocal Lease or the Operating Agreement.

34. In addition, Tennessee's theory omits consideration of significant operational and contractual problems with its assertion that it is actually delivering the Columbia Gulf shippers' gas to the Yscloskey Plant. First, its theory requires it to physically move 100 percent of the Columbia Gulf shipper gas to the Ysclosky Plant from the terminus of South Pass 77 at the same time that Columbia Gulf is delivering the equivalent volumes to Egan with its Muskrat Line capacity by displacement using equivalent gas volumes provided by Tennessee at Egan. In other words, the moment Columbia Gulf delivers its shippers' gas to Tennessee at the terminus of South Pass 77, Tennessee physically delivers equivalent volumes to Columbia Gulf at Egan to complete the backhaul from South Pass 77 to Egan. The gas cannot contractually or physically be in two places at the same time under two separate contracts.

35. Further, since Tennessee's theory involves a transportation of Columbia Gulf shipper gas to the Yscloskey Plant from the terminus of South Pass 77, but Columbia Gulf transports its shippers' gas to Egan from that point, Tennessee necessarily must assume a backhaul of the plant residue gas back to the interconnect with South Pass 77. That would be the only way for Columbia Gulf to be able backhaul the gas to Egan by displacement using its Muskrat Line capacity.[60] But Tennessee has no Muskrat Line delivery point at the interconnect of its system with South Pass 77 that it can use to transfer gas back to Columbia Gulf at that point. As the ALJ found, under the Reciprocal Lease, there is no delivery point located on Tennessee's Muskrat Line for Tennessee to deliver equivalent volumes of gas to Columbia Gulf other than at Egan.[61] Nor are there

[59] Initial Decision, 113 FERC at P 189.

[60] Otherwise, the gas could only get to Egan using a backhaul from the Yscloskey Plant tailgate using *Tennessee's* capacity and facilities, not from the terminus of the South Pass 77 line contrary to the certificate authorization under the 1997 Certificate Order.

[61] Initial Decision at P 211.

gas volumes physically available to Tennessee at the terminus of South Pass 77 for delivery to Columbia Gulf at that point to complete the claimed backhaul of conforming gas from the Yskloskey Plant that, likewise, conform to Tennessee's gas quality requirements. Tennessee's obligation under the Reciprocal Lease is to take gas from Columbia Gulf at the terminus of South Pass 77 and deliver equivalent Dths at Egan to Columbia Gulf, not at both points. Thus, Tennessee's theory fails because Tennessee cannot contractually or physically implement the implied backhaul of the conforming plant residue volumes from the plant tailgate back to the South Pass 77 terminus interconnect in order to fulfill its obligations under the Reciprocal Lease.

36. Tennessee's claim that gas owned by Columbia Gulf shippers is transported to the Yskloskey Plant on its 500 Line from the terminus of the South Pass 77 line, instead of being directly transported from that terminus point to Egan by Columbia Gulf using its Muskrat capacity, also fails to take into account how the transfer of title to gas supplies must occur under the authorizations granted to implement the Reciprocal Lease. Contrary to Tennessee's claims,[62] under the Reciprocal Lease, as approved by the Commission, Columbia Gulf shipper-owned gas never enters the 500 Line and instead is directly backhauled to Egan from the terminus of the South Pass 77 line by Columbia Gulf on a displacement basis using its own Muskrat line capacity. The gas that physically flows into the 500 Line no longer is owned by Columbia Gulf shippers and becomes Tennessee or Tennessee shipper-owned gas at that point, just as the gas that Tennessee delivers at Egan in implementing its part of the displacement of gas under the Reciprocal

[62] See Tennessee Brief on Exceptions at 61 note 58. Tennessee states, correctly, that the joint certificate application indicated that "the respective shippers on each system will retain title to any gas that is transported through the leased capacity" but, incorrectly, concludes that this means that the title of the gas does not transfer from Columbia Gulf shippers to Tennessee or its shippers at the South Pass 77 interconnect with its 500 Line and that the gas remains owned by Columbia Gulf shippers as it proceeds downstream on the 500 Line. As the quoted language from the certificate application reflects, Columbia Gulf shippers retain title to gas being transported using the "leased capacity." Tennessee's 500 Line is not "leased capacity." While the gas is in transit using the leased capacity, *i.e.*, the backhaul capacity of the Muskrat Line, the Columbia Gulf shippers hold title to the gas to meet the Commission's shipper-must-hold-title policy for Part 284 transportation service. That requirement was the express basis for the Commission's clarification in the 1997 Certificate Order that Columbia Gulf was to treat the lease of the Muskrat line as "an extension of their own facilities" and that the shippers are to be subject to Columbia Gulf's tariff. 78 FERC ¶ 61,182 at 61,751.

Lease changes title from whoever owned it to Columbia Gulf shippers once the volumes physically flow into Columbia Gulf's mainline at Egan.[63]

37. Tennessee has been vague on who owns title to the gas that physically enters its 500 Line at the terminus of South Pass 77 under the Reciprocal Lease, with Dynegy and Tennessee witnesses effectively pointing the finger at each other as to who holds title to the gas pursuant to the 2004 Straddle Plant agreement (Exhibit TGP-5).[64] Dynegy claims Tennessee holds title; Tennessee claims Dynegy holds title. But Tennessee also claims that the Columbia Gulf shippers hold title. Regardless of exactly who holds title to the gas in Tennessee's 500 Line that Columbia Gulf physically delivers to Tennessee at the terminus of South Pass 77 under the Reciprocal Lease, it cannot be the Columbia Gulf shippers who hold title because the certificate authorizing the leases did not include a lease of Tennessee's 500 Line capacity to Columbia Gulf. Gas with respect to which Columbia Gulf shippers hold title contractually flows in a continuous path from receipt points on South Pass 77 to Egan only using Columbia Gulf's South Pass 77 and Muskrat capacity. Since Tennessee is not transporting Columbia Gulf shipper-owned gas to the Yskloskey Plant, it cannot charge them for transportation to the plant.

38. Further, there is nothing inequitable about the fact that the gas Columbia Gulf tenders to Tennessee at the terminus of South Pass 77 is unprocessed and is later processed whereas the gas Tennessee delivers at Egan has already been processed. The

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[63] As Columbia Gulf demonstrated with its Exhibit CGT-4 map, a Tennessee shipper on Tennessee's Bluewater system could get a forward-haul on Tennessee's Muskrat capacity to the Tennessee 500 Line at the interconnect with South Pass 77 by displacement of those volumes at Egan with the volumes Columbia Gulf delivers at the terminus of South Pass 77. In this way, Tennessee can thereby avoid the fuel consumption of physically transporting the Tennessee shipper's volumes down the Muskrat Line to that point. Further, because gas entering Tennessee's Bluewater system is unprocessed, the Tennessee shipper would be subject to the processing requirements of Tennessee's tariff and, therefore, upon receipt of the equivalent volumes at the terminus of South Pass 77, would obtain processing at the Yscloskey Plant.

[64] *See, e.g.*, Columbia Gulf Brief on Exceptions at 43. While there may be cause to inquire further into whether Tennessee's transportation of South Pass 77 gas on its 500 Line to the Yscloskey Plant as part of Dynegy processing contracts violates the Commission's "shipper-must-hold-title" requirement and the Commission's regulations that require non-conforming transportation agreements to be filed with the Commission for review, such further inquiry is unnecessary to the disposition of the issues set for hearing.

gas displacement and exchange provision of the Reciprocal Lease, section 4.3.1, concerns the mutual obligations of Columbia Gulf and Tennessee to exchange "equivalent quantities" of gas at Egan and the terminus of South Pass 77, respectively, in order to physically accomplish the displacement of gas necessary to backhaul the Columbia Gulf Shippers' gas on the Muskrat Line from South Pass 77 to Egan by displacement. The difference in relative BTU content of the respective volumes is accounted for by Tennessee in the actual quantities of gas and BTUs it delivers at Egan. Tennessee explained that it delivers "thermally equivalent volumes" at Egan. Thus, for example, if Tennessee receives 100 Dth of gas at the terminus of South Pass 77, it is obligated only to deliver 100 Dth of gas at Egan. Tennessee cannot claim an equitable right to retain more Dths of gas at the South Pass 77 terminus than it delivers to Columbia Gulf at Egan.

39. The fact that Columbia Gulf's shippers may have entered into contracts for the transportation of Plant Thermal Reduction (PTR) volumes does not aid Tennessee. Although details about these alleged agreements in the record are sparse, and it is not clear who entered into these agreements,[65] the ALJ (ID at 74) found that these contracts were entered into by the South Pass 77 producer/shippers in conjunction with processing agreements with the plant to get only the liquefiable portion of their supplies transported to the Yscloskey Plant by Tennessee from receipt points on the South Pass 77 using

[65] There is some confusion in the record regarding the parties' reference to "PTR" volumes and whether they are the liquifiables portion of the gas that drops out at the plant, or "make-up" volumes given to Tennessee to replace those volumes, or both. Yscloskey Plant owners have an obligation under the 2004 Straddle plant Agreement to supply Tennessee with equivalent volumes to "make-up" for the volume of gas lost at the plant due to processing. See Exhibit TGP-5 at 15-16 ("Each Plant Owner shall make up its proportionate share of Plant loss by delivering into the Tennessee system a volume of gas equal to that utilized for such purposes. . . . Each Plant Owner shall be obligated to deliver its share of make-up gas either from fields now subject to gas sales agreements with Tennessee or from other available sources."). In addition, as provided in section 1 of the PTR rate Schedule, the plant owners are required to arrange for Tennessee to transport such additional "make-up" volumes under separate IT contracts, but pay the Rate Schedule PTR transportation rate for such service. See Seventh Revised Sheet No. 29A to Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1 (Rate Schedule PTR maximum rate of $0.1028/Dth plus ACA and 1% fuel). Non-plant owners, on the other hand, are not subject to the 2004 Straddle Plant Agreement and, to the extent they have Rate Schedule PTR transportation contracts with Tennessee, only transport the "liquifiables" portion of their gas to the plant under such contracts.

Tennessee's South Pass 77 and 500 Line capacity. In this way, the producer/shippers could obtain their share of the valuable plant proceeds from the extraction of the liquid hydrocarbons at the plant. However, as the ALJ found, any such PTR agreements only relate to the *portion* of the shippers' gas supplies that flow on *Tennessee's* South Pass 77 and 500 Line capacity, and not on Columbia Gulf's. Therefore, like any of the other transportation services Tennessee provides its shippers using its own capacity, these services are not governed by the Reciprocal Lease and their existence in no way implicates how the Reciprocal Lease and related certificate are to be interpreted with respect to gas supplies transported by Columbia Gulf on its own capacity. In any event, if a Columbia Gulf South Pass 77 shipper elected to contract for Rate Schedule PTR transportation service from Tennessee for the portion of the shipper's gas that represents liquifiables, Tennessee cannot also claim the right to separately charge an additional $0.02/Dth for transportation of 100 percent of the volumes entering the 500 Line, including the same "PTR" volumes.

40. Finally, Tennessee takes exception to the refund order of the ALJ. The initial decision specifies that "within thirty (30) days from the issuance of the final order of the Commission in this proceeding, Tennessee shall refund to any shipper which used Columbia Gulf's South Pass capacity and which Tennessee directly, or indirectly through Dynegy, billed and collected for that transportation, the amount it charged that shipper for transportation between the South Pass 77 terminus and Yscloskey …."[66] Despite Tennessee's objections, the Commission finds that, as modified to include interest in accordance with 18 C.F.R. § 154.501(d) (2006), the refund requirement of the initial decision is appropriate. Refunds with interest are an appropriate remedy for the illegal actions of Tennessee. If, as Tennessee claims, no charges were in fact collected from any Columbia Gulf shippers, then no refunds will be required.

The Commission orders:

(A) Columbia Gulf's complaint filed in this proceeding is granted as discussed above.

(B) Tennessee is to cease and desist from charging any Columbia Gulf shipper whose gas is transported using Columbia Gulf's South Pass 77 and Muskrat Line capacity between receipt points on South Pass 77 and Columbia Gulf's facilities at Egan, Louisiana, under the certificate authorized by the Commission's 1997 Certificate Order, as discussed above, for transportation of such gas on Tennessee's 500 Line.

[66] Initial Decision, 113 FERC at P 288.

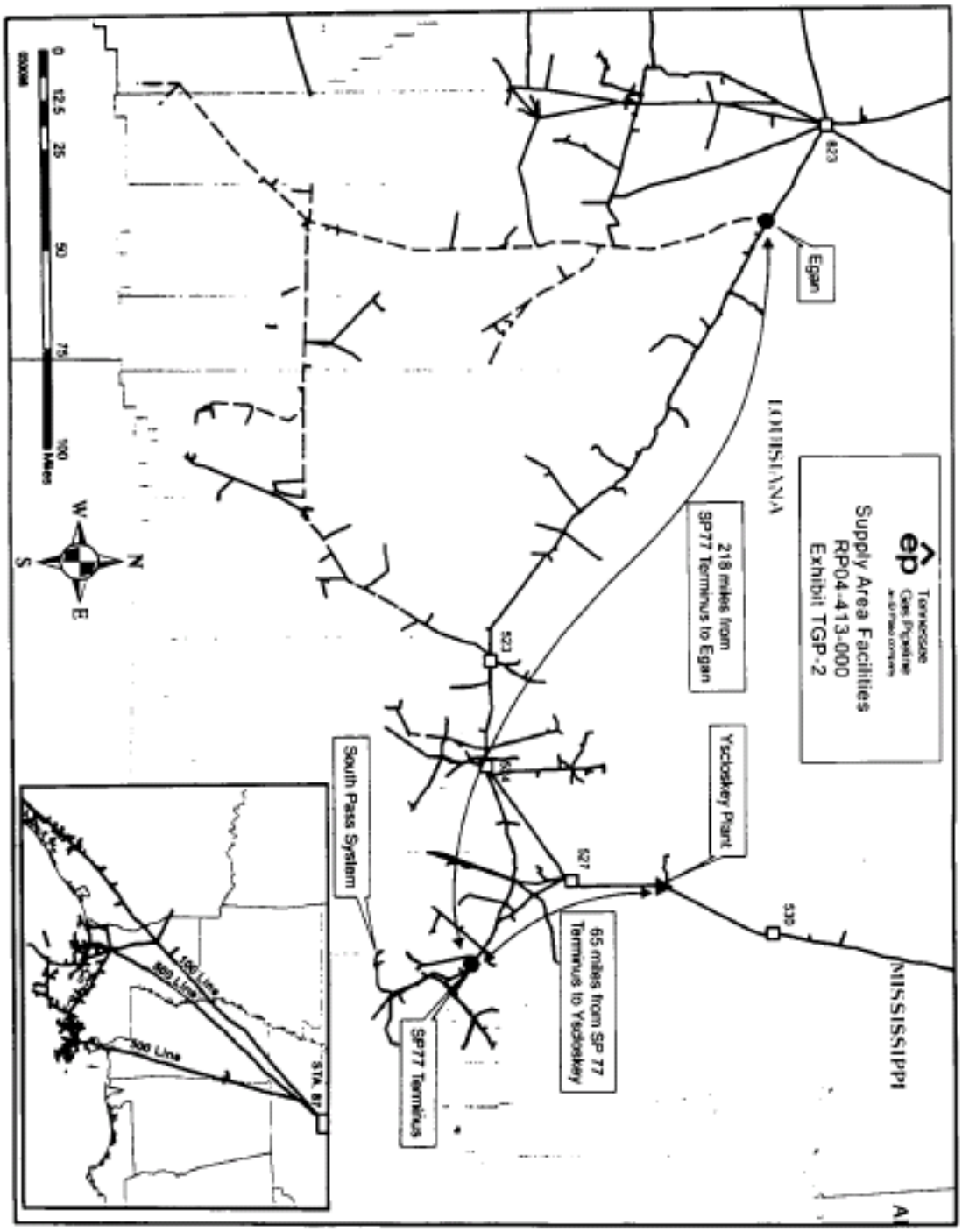
(C) Within thirty (30) days from the issuance of this Order, Tennessee shall refund, with interest in accordance with 18 C.F.R. § 154.501(d) (2006), any charges for transportation of gas on Tennessee's 500 Line it directly, or indirectly through Dynegy, collected from any Columbia Gulf shipper relative to gas transported using Columbia Gulf's South Pass 77 and Muskrat Line capacity, as described above.

By the Commission.

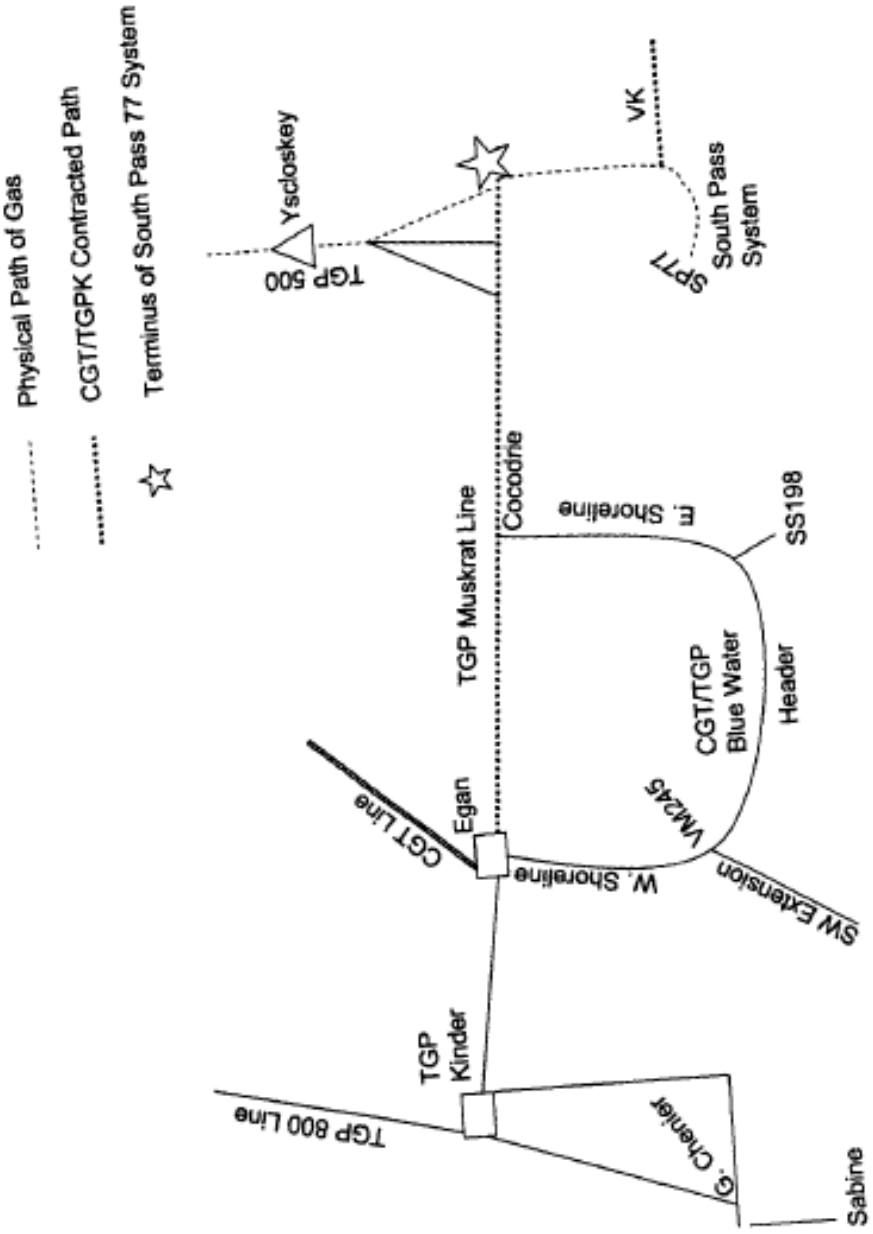
(S E A L)

Magalie R. Salas,
Secretary.

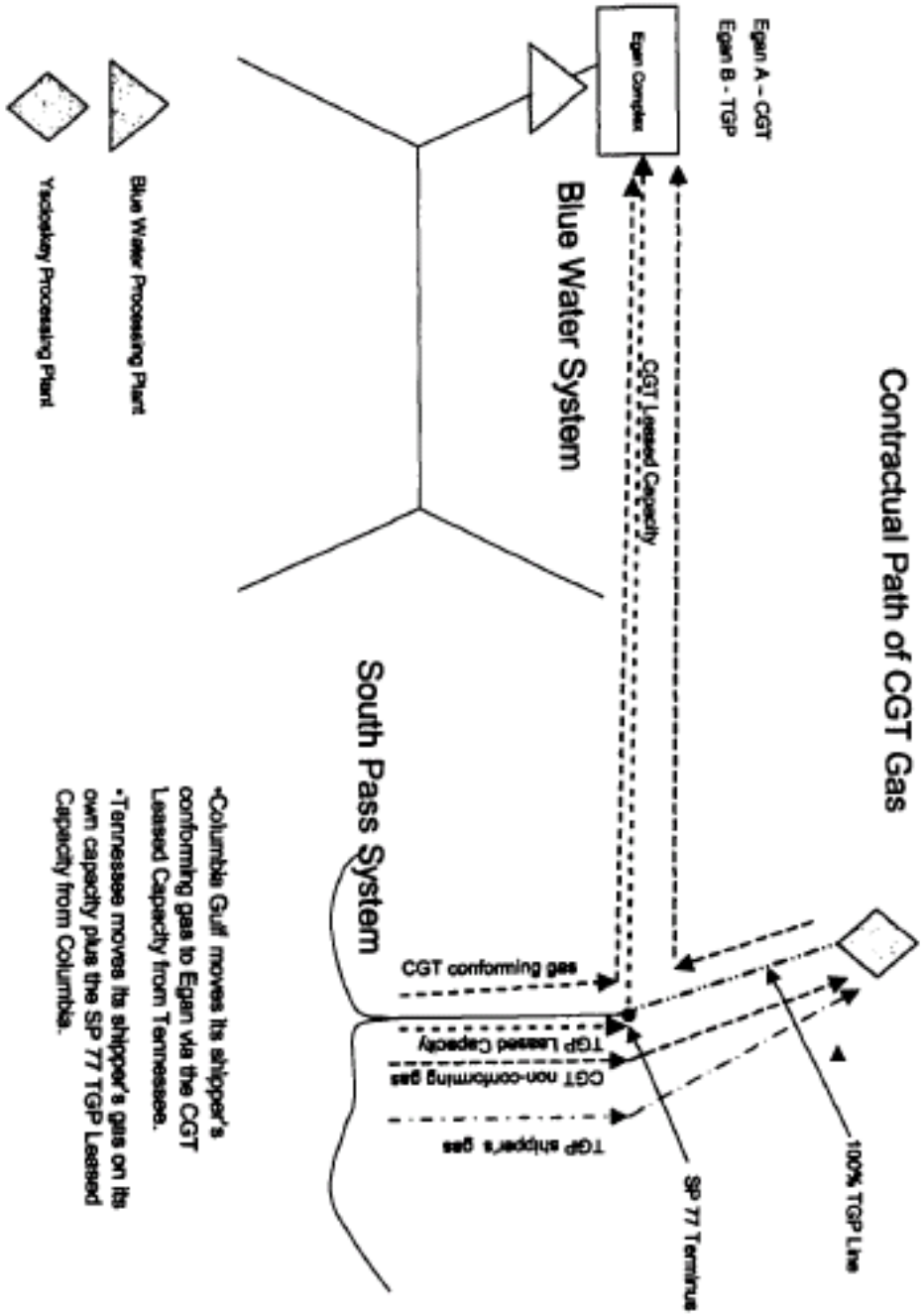
Appendix A


Supply Area Facilities
RP04-413-000
Exhibit TGP-2
Egan
218 miles from
SP77 Terminus to Egan
Ysclosakey Plant
65 miles from SP 77
Terminus to Ysclosakey
South Pass System
SP77 Terminus
LOUISIANA
MISSISSIPPI
523
524
527
535
0 12.5 25 50 75 100 Miles
W
N
S
E
L 100 Line
869 Line
300 Line
STA. 87

Appendix B


Physical Path of Gas
CGT/TGPK Contracted Path
Terminus of South Pass 77 System
Ysclosky
TGP 500
VK
SPTT
South Pass System
Cocodrie
TGP Muskrat Line
E. Shoreline
SS198
CGT/TGP Blue Water Header
VM245
Egan
CGT Line
W. Shoreline
SW Extension
TGP Kinder
TGP 800 Line
G. Chenier
Sabine

Appendix C


Contractual Path of CGT Gas
Egan A - CGT
Egan B - TGP
Egan Complex
CGT Leased Capacity
Blue Water System
South Pass System
Blue Water Processing Plant
Yscloskey Processing Plant
CGT conforming gas
TGP Leased Capacity
CGT non-conforming gas
TGP shipper's gas
SP 77 Terminus
100% TGP Line
•Columbia Gulf moves its shipper's conforming gas to Egan via the CGT Leased Capacity from Tennessee.
•Tennessee moves its shipper's gas on its own capacity plus the SP 77 TGP Leased Capacity from Columbia.